

## REMARKS/ARGUMENTS

The rejections presented in the Office Action dated September 21, 2006 (hereinafter Office Action) have been considered. Claims 1-61 remain pending in the application. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Claims 1-6, 8, 10-11, 13-25, 31-41, 44-49, and 51-61 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,431,693 to *Schroepel* (hereinafter "*Schroepel*").

To anticipate a claim, the asserted reference must clearly and unequivocally disclose every element of the claimed invention. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. All claim elements, and their limitations, must be found in the prior art reference to maintain a rejection based on 35 U.S.C. §102.

Applicant respectfully disagrees with the Examiner's characterization of *Schroepel* and the contention that *Schroepel* anticipates these claims. Applicant respectfully asserts that several features recited in the rejected claims are not disclosed in *Schroepel*. Nevertheless, Applicant has amended independent claims 1, 39, 60 and 61 to advance the patent application to allowance.

Each of the independent claims 1, 39, 60, and 61, as amended, recites some variation of establishing a second classification window if a trigger characteristic indicating a cardiac response other than non-capture is detected in the first classification window.

In contrast to Applicant's invention as claimed in 1, 39, 60, and 61, *Schroepel* teaches an extended window of time if a cardiac response of non-capture is determined. *Schroepel* describes searching for a minimum and maximum peak in a first window of time. If the minimum and maximum peaks are not found in the first window, then the stimulating pulse is classified as not having captured the heart. (col. 6, lines 46-50) *Schroepel* further states at col. 8, lines 5-11, "if the method ends in a determination of non-capture at the end of the first window . . . it may nevertheless be useful to continue to look

for intrinsic contractions that are manifested within that portion of the extended window of time.” Thus the teachings of *Schroeppel* oppose those of the Applicant’s invention because *Schroeppel* teaches an extended window if non-capture is determined. Claims 1, 39, 60, and 61 recite a second classification window if a cardiac response other than non-capture is indicated.

*Schroeppel* cannot support the anticipation rejection because the reference does not teach each and every element and limitation of independent claims 1, 39, 60, and 61.

Dependent claims 2-6, 8, 10-11, 13-25, 31-38, 40, 41, 44-49, and 51-59, which are dependent from independent claims 1 or 39, respectively, were also rejected under 35 U.S.C. §102(b) as being unpatentable over *Schroeppel*. While the Applicant does not acquiesce with the particular rejections to these dependent claims, it is believed that these rejections are now moot in view of the remarks made in connection with independent claims 1, 39, 60, and 61. These dependent claims include all of the limitations of the base claim and any intervening claims, and recite additional features which further distinguish these claims from the cited reference. Therefore, dependent claims 2-6, 8, 10-11, 13-25, 31-38, 40, 41, 44-49, and 51-59 are also not anticipated by *Schroeppel*.

Claims 7, 9, and 42-43 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Schroeppel*. Claim 12 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Schroeppel* in view of U.S. Patent No. 6,226,551 to *Zhu et al.* (hereinafter “*Zhu*”). Claims 26-30 and 50 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Schroeppel* in view of U.S. Patent No. 6,238,419 to *Lindgren* (hereinafter “*Lindgren*”).

Each of claims 7, 9, 12, 26-30, 42, 43, and 50 depend from one of independent claims 1 and 39, respectively. Independent claims 1 and 39 are not obvious for at least the reason that the cited references fail to teach or suggest each and every limitation recited in each claim. While the Applicant does not acquiesce to the particular rejections to these dependent claims, it is believed that these rejections are now moot in view of the remarks made in connection with independent claims 1 and 39. These dependent claims include all of the limitations of the base claim and any intervening claims, and recite additional features which further distinguish these claims from the cited references. If an independent

claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Therefore, dependent claims 7, 9, 12, 26-30, 42, 43, and 50 are not obvious over *Schroeppel* in combination with *Zhu* and in further combination with *Lindgren*.

It is to be understood that the Applicant does not acquiesce to the Examiner's characterization of the asserted art or the Applicant's claimed subject matter, nor of the Examiner's application of the asserted art or combinations thereof to the Applicant's claimed subject matter. Moreover, the Applicant does not acquiesce to any explicit or implicit statements or conclusions by the Examiner concerning what would have been obvious to one of ordinary skill in the art or valid alternative arrangements. The Applicant respectfully submits that a detailed discussion of each of the Examiner's rejections beyond that provided above is not necessary, in view of the clear absence of teaching and suggestion of various features recited in the Applicant's pending claims and lack of motivation to combine reference teachings. The Applicant, however, reserves the right to address in detail the Examiner's characterizations, conclusions, and rejections in future prosecution.

In addition, the Applicant specifically disputes the Examiner contention that a time period of 0 ms between two windows constitutes a delay between the windows. (Office Action, Page 3). The Applicant respectfully submits that 0 ms between two windows characterizes the absence of a delay between the two windows.

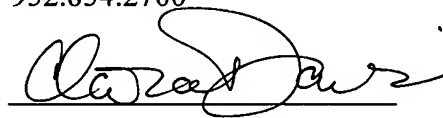
The Applicant respectfully requests withdrawal of the claim rejections and notification that the application is in condition for allowance. Authorization is given to charge Deposit Account No. 50-3581 (GUID.142PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the undersigned attorney of record invites the Examiner to contact her to discuss any issues related to this case.

Respectfully submitted,

HOLLINGSWORTH & FUNK, LLC  
8009 34<sup>th</sup> Avenue South, Suite 125  
Minneapolis, MN 55425  
952.854.2700

Date: January 22, 2007

By:

A handwritten signature in black ink, appearing to read 'Clara Davis', is written over a horizontal line.

Clara Davis  
Reg. No. 50,495